

Transferable Development Rights

Using Market Forces
and Master Planning
to Manage Growth and
Environmental Quality

Transferable Development Rights (TDR)

is a local zoning technique to preserve environmentally sensitive areas, open space, farmland, historic landmarks or other community assets without using public funds. Using TDRs, land owners in designated preservation areas are given the option of preserving their property by selling their development rights. These transferable rights are purchased (usually by developers) to increase the amount of development allowed in designated areas suitable for higher growth.

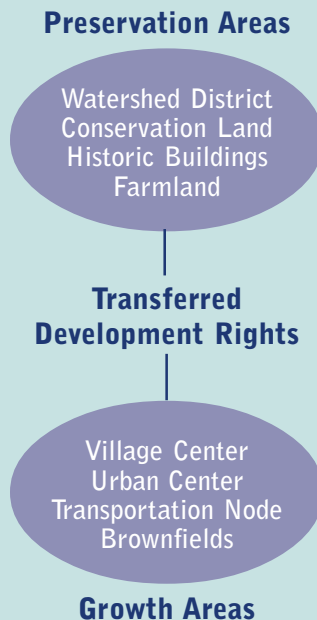
Is Your Town Searching For Ways to Manage Growth?

Many communities facing growth pressure want to preserve their community character, farmland and open spaces, and air and water quality. Increasingly, however, many are finding that their one, two or even five acre residential zoning doesn't accomplish this. Over time, communities can get covered with sprawling, large lot subdivisions while losing the more traditional New England pattern of compact village centers surrounded by rural areas. This low density development can increase municipal service costs (schools, roads, water, sewer, fire and police, etc.) and reliance on the automobile while being more consumptive of land and natural resources. Transferable Development Rights (TDRs) are one tool for shifting growth towards suitable areas while preserving open space and rural property values.

A TDR program is an alternative development approach that addresses both growth and preservation. Through a municipality's zoning ordinance, a TDR program provides the option to transfer some or all of the development that would ordinarily occur in outlying or rural areas to areas where infrastructure is in place to better accommodate growth. The program allows farmers or other rural landowners to sell the development rights to their land - as opposed to the land itself - to developers for projects in designated growth areas. As a result, landowners retain ownership and use of their land (but are restricted from developing it further) while developers are allowed to increase the density and profit of development projects in growth areas. The public benefits by gaining a pattern of development that matches the overall vision of the community

master plan. EPA New England supports TDRs since they serve as market-based pollution prevention programs.

The right to develop one's property is just one of many rights that come with land ownership. In a TDR program, as an alternative to developing or selling their land, landowners in designated preservation areas are allowed to sever this development right and sell it to developers who are building in designated growth areas. Note that these growth and preservation areas generally go by other names; this brochure uses these terms for simplicity. Some examples are shown below:



In contrast to public purchase of open land or the purchase of development rights through conservation easements, a successful TDR program allows important resources and rural areas to be preserved using market forces rather than public funds. And since New England TDR programs would be embedded within local plans and zoning codes, they can be tailored to meet local needs.

On the positive side, TDRs are one way to enable long term growth and preservation that is consistent with a community's master plan. A TDR program gives rural land owners the choice of selling development rights instead of developing or selling their land to raise money. And with development restricted, many taxes are then reduced. In addition, the more compact development in the designated growth areas can minimize municipal service costs (schools, roads, water, sewer, etc.) and promote alternatives to auto-dependent travel (walking, cycling, mass transit, etc.). The resulting decrease in car use contributes to cleaner air and water. TDRs also help preserve open space, biodiversity, and natural resource-based business, such as farming and forestry, as well as reduce polluted stormwater runoff. Again, if successful, a TDR program uses market forces and incentives rather than public funds to preserve natural resources and rural countryside.

On the other hand, gaining support for the designated growth areas can be challenging, due to the increased density and infrastructure required.

*What Are Some of the Pros
& Cons of TDRs?*

Not everyone wants to live on a smaller (quarter-acre to half-acre) lot although recent market research in Maine shows strong demand for traditional neighborhoods like those fostered by TDRs. Some people also may believe that TDRs are too complex to understand or implement effectively, or be concerned about the potential for legal challenges. (One way to guard against such challenges is to ensure a logical connection between the lower building density in the preservation area and the higher density in the growth area). A market analysis may also be needed to obtain a realistic assessment of whether TDRs would work in your community. In some situations, a TDR bank with initial public funding may be needed to act as a clearinghouse or as a buyer of last resort.

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Can a TDR Program Work for Your Community?

Although TDR programs can be enacted in all six New England states, they will not necessarily work everywhere. To be successful, a community that wants to use TDRs must:

- be experiencing growth pressure, so there is sufficient demand for new development
- have public support for increasing density and providing infrastructure for the designated growth area(s)
- have a united community vision and understanding of TDRs via thorough master planning and public participation
- set up a streamlined program to administer the TDR program

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Have Any New England Communities Used TDRs?

While dozens of municipalities across New England have enacted TDR ordinances, the following towns and cities are those that have accomplished actual (or pending) TDR transactions:

Stowe, Vermont

has used TDRs to preserve the rural character of Mountain Road between the village and ski resort. TDRs helped compensate landowners in the preservation area where lot sizes were increased (i.e., not as many homes can be built on a given property due to the TDR program), and a land trust gained funds by selling the development rights from a preservation area property. (For more information contact Brian Frazier at 802/253-6130.)

South Burlington, Vermont

allows TDRs to be established in preservation areas at a rate of 1.2 dwelling units per acre; they can then be used in designated development areas to increase density from 1.2 to 4 units per acres. A 45-acre hayfield has been preserved as a result of the program. (For more information contact Ray Belair at 802/846-4106.)

Groton, Massachusetts

uses a form of TDR with two options. For every buildable lot preserved, a developer can either: a) increase density elsewhere in his or her project or b) obtain relief from the town's annual building permit limit. Over 400 acres have been preserved to date, including a shoreline greenway along the Nashua River, due largely to use of the second option. (For more information contact Michelle Collette at 978/448-1105.)

Sunderland, Massachusetts

has a TDR program wherein development rights from either agricultural or watershed districts can be sold to increase density by up to a factor of two in designated growth areas. That is, residential lot sizes in designated growth areas can be half the size normally allowed, provided that sufficient TDRs have been purchased from the preservation area(s). (For more information contact Town Clerk Wendy Houle at 413/ 665-1442.)

New Bedford, Massachusetts

has a TDR program (with two pending transactions) designed to maintain the marine-industrial vitality of its historic working waterfront while allowing other uses as well. (For more information contact Mathew J. Thomas, Esq. at 508/994-1500.)

Outside of New England

TDR's have been used to save thousands of acres of open space in areas like the Long Island Pine Barrens, the New Jersey Pinelands and Montgomery County, MD.

What Have Communities Done to Implement TDR Programs?

As an incentive to encourage preservation area landowners to sell TDRs rather than develop their land, some TDR programs have increased the minimum buildable lot size in preservation areas - say from 5 acres to 25 acres, as done in Maryland - but based the TDR credits on the original (5 acre) zoning. Thus an owner of 100 acres may either sell 20 TDR credits or build on four 25- acre lots.

As an incentive for developers to buy TDR credits, some programs have allowed up to two dwelling units in growth areas for each TDR purchased in preservation areas. An overall maximum density can then be established to address concerns about overcrowding. Alternatively, some communities design their TDR programs to only relocate and not increase residential development.

In an effort to build support for growth areas, many practitioners recommend targeting these areas for elderly, affordable or assisted-living housing and allowing a mix of residential and commercial land uses to maximize the benefit of compact, walkable developments.

TDR programs tend to be highly location-specific rather than one-size-fits-all. Groton, MA (see previous section), for example, has developed a TDR variation which allows developers to double their annual building limit per subdivision (from six to twelve) by buying TDRs. Other towns considering TDRs have assessed their existing development pattern for areas that could act as vibrant village centers within a TDR format. Nationally, TDRs have also been used to address regional growth concerns by allowing development credits to be transferred across municipal boundaries.

From a commercial standpoint, some TDR programs allow development credits purchased from residential areas to be used for additional commercial space in growth areas. Some communities prefer this option since it allows growth that doesn't necessarily overburden schools. In this approach, each TDR allows a certain amount (say 1,000 square feet) of extra commercial space above the amount normally allowed.

Finally, to be successful, TDR programs should be as simple and streamlined as possible. In some instances local TDR ordinances have been boiled down to four or five pages.

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*Where Can I Get More Information
On New England TDRs?*

As an introduction to TDRs, this brochure does not fully address many of the implementation issues that would surface should your community decide to start a TDR program. Among others, questions regarding market viability and expected TDR values, incentives, taxation, administration and permanency would need to be resolved. Some sources for more information are listed below:

EPA New England:

David Dickerson 617/918-1329
dickerson.dave@epa.gov
Rona Gregory (legal issues) 617/918-1096
gregory.rona@epa.gov

Connecticut:

C. James Gibbons, U.Conn Extension System,
860/345-4511, cgibbons@canr1.cag.uconn.edu

Massachusetts:

Kurt Gaertner, Exec. Office of Env. Affairs, 617/
626-1154, kgaertner@state.ma.us

Maine:

Beth Della Valle, State Planning Office, 207/
287-2851, beth.della.valle@state.me.us

New Hampshire:

Carolyn Russell, Dept. of Environmental Ser-
vices, 603/271-3010, crussell@des.state.nh.us

Rhode Island:

Derwent Riding, Statewide Planning Program,
401/222-3949, driding@doa.state.ri.us

Vermont:

Gina Campoli, Agency of Nat. Resources, 802/
241-3618, gina.campoli@anrmail.anr.state.vt.us

EPA New England is willing to meet with local officials with a strong interest in developing TDR programs to provide further information and advice. Contact Mr. Dickerson at EPA (see above).

Saved by Development - Preserving Environmental Areas, Farmlands and Historic Landmarks with Transfer of Development Rights by Rick Pruetz. Arje Press, Burbank, CA. September 1997.

Transferable Development Rights Programs by Richard J. Roddewig and Cheryl A. Inghram. American Planning Association, Planning Advisory Service, Report Number 401. November 1998.

Banking on TDRs: the Government's Role as Banker of Transferable Development Rights by Sarah J. Stevenson. New York University Law Review, 73 NYULR 1329. October 1998.

Some Reading Suggestions

Many thanks to the Montgomery County, PA Planning Commission for their text and illustrations.

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The following illustrates how TDR zoning could compare to conventional zoning:

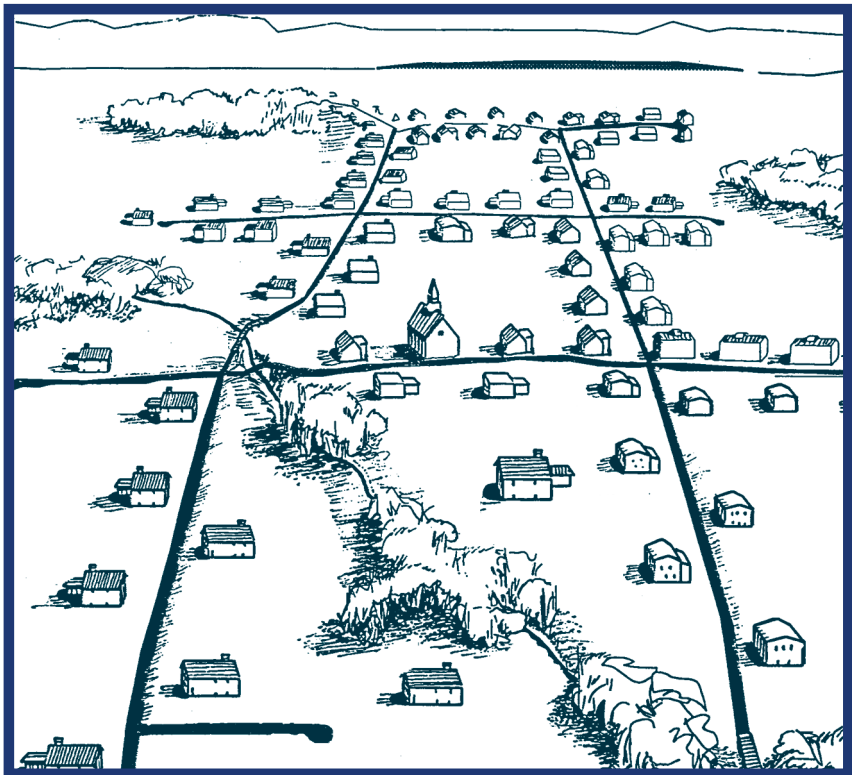
1. The Present:

An existing hamlet is surrounded by open farmland.



2. The Future with Conventional Zoning:

The farmland around the hamlet is developed using 1 to 5 acre lots. No open land or farmland is left.



3. The Future with TDR Zoning:

The farmland is permanently preserved from development. New development is concentrated near the hamlet in a new village.

